

Memorandum



Date: October 19, 2004

To: Honorable Chairperson Barbara Carey-Shuler, Ed.D.
and Members, Board of County Commissioners

Agenda Item No. 7(P)(1)(S)

From: George M. Burgess
County Manager

A handwritten signature in black ink, appearing to read "G. Burgess", written over the printed name of George M. Burgess.

Subject: Memorandum of Agreement and Locally Funded Agreement with the Florida Department of Transportation to fund the Design and Construction of Roadway Improvements along NE 2 Avenue from NE 12 Street to NE 14 Street

RECOMMENDATION

It is requested that the Board approve the attached resolution authorizing the execution of a Memorandum of Agreement and a Locally Funded Agreement between Miami-Dade County and the State of Florida Department of Transportation, to provide funding for roadway improvements along NE 2 Avenue from NE 12 Street to NE 14 Street.

BACKGROUND

Roadway improvements need to be addressed along NE 2 Avenue in the vicinity of the Performing Arts Center before the complex opens in late 2005. These deficiencies include inadequate drainage and substandard roadway lighting issues that adversely impact vehicular and pedestrian traffic in the area.

The Florida Department of Transportation (FDOT) has a pending construction project, designated as the I-395 Interim Improvement Project, which will provide milling and resurfacing, lighting, pavement markings and the reversal of traffic flow along NE 2 Avenue from NE 12 Street to NE 11 Street. Construction is anticipated to begin in May 2005.

Both the County and FDOT agreed that it would be both cost effective and reduce public inconvenience to include the County's improvements in the I-395 Interim Improvement Project. Accordingly, the County will provide funding to supplement FDOT's existing design and construction contracts to include milling and resurfacing, drainage, curb and gutter, sidewalk and lighting improvements along NE 2 Avenue from NE 12 Street to NE 14 Street.

The subject agreements provide for County participation in funding up to \$300,000 of the costs for these improvements from available Road Impact Fee District 2 funds.

A handwritten signature in black ink, appearing to be a stylized "G" or "B", written over a horizontal line.

Assistant County Manager



MEMORANDUM

(Revised)

TO: Hon. Chairperson Barbara Carey-Shuler, Ed.D.
and Members, Board of County Commissioners

DATE: October 19, 2004

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No. 7(P)(1)(S)

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved _____ Mayor

Veto _____

Override _____

Agenda Item No. 7(P)(1)(S)

10-19-04

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF A MEMORANDUM OF AGREEMENT AND A LOCALLY FUNDED AGREEMENT WITH THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, TO FUND THE DESIGN AND CONSTRUCTION OF ROADWAY IMPROVEMENTS ALONG NE 2 AVENUE FROM NE 12 STREET TO NE 14 STREET; AND AUTHORIZING THE COUNTY MANAGER TO EXERCISE THE PROVISIONS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Memorandum of Agreement and the Locally Funded Agreement with the State of Florida Department of Transportation, to provide for the funding of roadway improvements on NE 2 Avenue from NE 12 Street to NE 14 Street; in substantially the form attached hereto and made a part hereof; and authorizes the County Manager to execute same for and on behalf of Miami-Dade County, and to exercise the provisions contained therein.

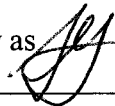
The foregoing resolution was offered by Commissioner _____, who
moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

Dr. Barbara Carey-Shuler, Chairperson	
Katy Sorenson, Vice-Chairperson	
Bruno A. Barreiro	Jose "Pepe" Diaz
Betty T. Ferguson	Sally A. Heyman
Joe A. Martinez	Jimmy L. Morales
Dennis C. Moss	Dorin D. Rolle
Natacha Seijas	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this
19th day of October, 2004. This Resolution and contract, if not vetoed, shall become
effective in accordance with Resolution No. R-377-04.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as _____
to form and legal sufficiency. 

Thomas Goldstein

By: _____
Deputy Clerk

LOCALLY FUNDED AGREEMENT

**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
MIAMI-DADE COUNTY, FLORIDA**

**NORTHEAST SECOND AVENUE FROM
TWELFTH STREET TO FOURTEENTH STREET**

THIS AGREEMENT is made and entered into this _____ day of _____, 2004 between the State of Florida, Department of Transportation, hereinafter referred to as the DEPARTMENT, and Miami-Dade County, hereinafter referred to as the COUNTY.

WITNESSETH

WHEREAS, the DEPARTMENT has an existing design and construction project designated as I-395 Interim Improvement Project which includes milling and resurfacing, pavement markings and reversal of traffic flow on NE 2nd Avenue from NE 12th Street to NE 11th Street, Project Financial Management Number 251688-2-52-01; and

WHEREAS, the COUNTY proposes to augment the DEPARTMENT'S roadway project on NE 2nd Avenue from NE 12th Street to NE 14th Street by adding lighting along both sides of the street from NE 12th Street to NE 14th Street and drainage, hereinafter referred as to the "PROJECT"; and

WHEREAS, the parties agree that it would be expedient and cost effective for the COUNTY to supplement the DEPARTMENT'S existing design and construction contract and allow the DEPARTMENT'S contractor to construct all of the roadway improvements in accordance with the PROJECT design plans; and

WHEREAS, The DEPARTMENT and the COUNTY have determined that it would be to the best interest of the general public.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the parties herein agree:

1. The DEPARTMENT will design and construct the PROJECT described in Exhibit "A" according to DEPARTMENT standards and specifications.

2. The COUNTY will pay to the DEPARTMENT the total sum of Three Hundred Thousand Dollars (\$300,000) for the design and construction of the PROJECT, as follows:

a. The COUNTY will furnish the DEPARTMENT an advance deposit of Forty-Four Thousand Five Hundred Eighty-Six Dollars (\$44,586) no later than sixty (60) days from the date of execution of this agreement.

b. The COUNTY agrees that it will, at least 14 (fourteen) calendar days prior to the DEPARTMENT'S advertising of the project for bid, furnish the DEPARTMENT an additional advance deposit of Two Hundred Fifty-Five Thousand Four Hundred Fourteen Dollars (\$255,414.00).

3. The DEPARTMENT may utilize the deposits for payment of the costs of the project.

4. If the accepted bid amount is in excess of the advance deposit amount, the COUNTY will provide an additional deposit within 60(sixty) calendar days of notification from the DEPARTMENT or prior to posting of the accepted bid, whichever is earlier, so that the total deposit is equal to the bid amount. The DEPARTMENT will notify the COUNTY as soon as it becomes apparent the accepted bid amount is in excess of the advance deposit amount; however, failure of the DEPARTMENT to so notify the COUNTY shall not relieve the COUNTY from its obligation to pay for its full participation. If the COUNTY cannot provide the additional deposit within 30 (thirty) calendar days, a letter must be submitted to and approved by the DEPARTMENT's project manager indicating when the deposit will be made. The COUNTY understands the request and approval of additional time could delay the project, and additional costs may be incurred due to delay of the project.

5. Should project modifications occur that increase the COUNTY's share of total project costs, the COUNTY will be notified by the DEPARTMENT accordingly. The COUNTY agrees to provide, without delay, in advance of the additional work being performed, adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund its share of the project. The DEPARTMENT shall notify the COUNTY as soon as it becomes apparent the actual costs will overrun the award amount; however, failure of the DEPARTMENT to so notify the COUNTY shall not relieve the COUNTY from its obligation to pay for its full participation.

6. Funds due from the COUNTY during the project not paid within 40(forty) calendar days from the date of the invoice are subject to interest charge at a rate established pursuant to Section 55.03, Florida Statutes.

7. The DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred and sixty days of final payment to the Contractor. The DEPARTMENT considers the PROJECT complete when the final payment has been made to the Contractor, not when the construction work is complete. All project cost records and accounts shall be subject to audit by a representative of the COUNTY for a period of three (3) years after final close out of the PROJECT. The COUNTY will be notified of the final cost. Both parties agree that in the event the final accounting of total project costs pursuant to the terms of this agreement is less than the total deposits to date, a refund of the excess will be made by the DEPARTMENT to the COUNTY. If the final

accounting is not performed within three hundred and sixty (360) days, the COUNTY is not relieved of its obligation to pay.

8. Type of Deposit (choose one):

The payment of funds under this Locally Funded Agreement will be made:

_____ directly to the Department for deposit.

X directly to the Department for deposit and, as provided in the attached MOA between the County, Department and the State of Florida, Department of Financial Services, Division of Treasury.

9. The DEPARTMENT will allow the COUNTY to review the design plans and provide input as part of the review process.

10. The DEPARTMENT will obtain all necessary permits for the project.

11. The DEPARTMENT will supervise and inspect all aspects of the PROJECT construction.

12. To the extent provided by law, the COUNTY shall indemnify, defend, and hold harmless the DEPARTMENT and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the COUNTY, its agents, or employees, during the performance of the Agreement, except that neither the COUNTY, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the DEPARTMENT or any of its officers, agents, or employees during the performance of the Agreement.

To the extent provided by law, the DEPARTMENT shall indemnify, defend, and hold harmless the COUNTY and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the DEPARTMENT, its agents, or employees, during the performance of the Agreement, except that neither the DEPARTMENT, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the COUNTY or any of its officers, agents, or employees during the performance of the Agreement.

13. This agreement shall be governed and construed in accordance with the laws of the State of Florida.

14. If any part of this Agreement shall be determined to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, if such remainder continues to conform to the terms and requirements of the applicable law.

15. The COUNTY shall, by the issuance of a resolution by its Board of County Commissioners, ratify this Agreement. Such resolution will be hereby attached to this Agreement as Exhibit "B".

16. Notices: All notices, requests, demands, consents, approvals and other communications which are required to be served or given hereunder shall be in writing and shall be sent by registered or certified U.S. mail, return receipt requested, postage prepaid, addressed to the party to receive such notices as follows:

To DEPARTMENT: Florida Department of Transportation
1000 Northwest 111th Avenue, Room 6235
Miami, Florida 33172-5800
Attention: Director of Operations

To COUNTY: Miami-Dade Public Works Department
111 Northwest First Street, Suite 1610
Miami, Florida 33128-1970
Attention: Highway Division

Either party may, by notice given as aforesaid, change its address for all subsequent notices. Notices given in compliance with this section shall be deemed given when placed in the mail.

17. This Joint Participation Agreement is the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified or amended only by mutual consent of the parties in writing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, on the day and year above written.

MIAMI-DADE COUNTY

**STATE OF FLORIDA, DEPARTMENT
OF TRANSPORTATION**

BY: _____
COUNTY MANAGER

BY: _____
DISTRICT SECRETARY

ATTEST: _____

ATTEST: _____

BY: _____
DEPUTY CLERK

LEGAL REVIEW

COUNTY ATTORNEY

DISTRICT GENERAL COUNSEL

EXHIBIT "A"

1. Project Description:

I-395 Interim Improvements to Access Roads to the Performing Arts Center / NE 2nd Avenue **addition of lighting on both sides of the street and remedial drainage improvements**, to the original scope of the project as requested by Miami-Dade County Public Works Department.

PROJECT Limits: From NE 12th Street to NE 14th Street

PROJECT Length: 0.148 Miles

FDOT Financial PROJECT ID: 251688-2-52-01

County: Miami Dade

FDOT Project Manager: Elsa Riverol, P.E.

Design Consulting Firm: Civil Works, Inc.

2. Project Funding:

The amounts shown below are the current cost estimate of the project:

Entity	Amount
Design Cost	\$44,586.00
Construction Cost Estimate	<u>\$255,414.00</u>
Total:	\$300,000.00

Exhibit “B”

COUNTY RESOLUTION

MEMORANDUM OF AGREEMENT

THIS AGREEMENT, made and entered into this __, day of _____, 200__, by and between the State of Florida, Department of Transportation, hereinafter referred to as "FDOT" and the State of Florida, Department of Financial Services, Division of Treasury, hereinafter referred to as "Treasury" and Miami-Dade County, hereinafter referred to as the "Participant".

WITNESSETH

WHEREAS, "FDOT" is currently designing and constructing the following project:

Main Financial Project No.: 251688-2-52-01

County: Miami-Dade

hereinafter referred to as the "Project".

WHEREAS, FDOT and the Participant entered into a **Locally Funded Agreement** dated _____, 2004, wherein FDOT agreed to perform certain work on behalf of the Participant in conjunction with the Project.

WHEREAS, the parties to this AGREEMENT mutually agreed that it would be in the best interest of the FDOT and the Participant to establish an interest bearing escrow account to provide funds for the work performed on the Project on behalf of the Participant by the FDOT.

NOW THEREFORE, in consideration of the premises and the covenants contained herein, the parties agree to the following:

1. A deposit in the amount of Three Hundred Thousand Dollars (\$300,000) will be made by the Participant into an interest bearing escrow account established by the Department for the purposes of the project. Said escrow account will be opened with the Department of Financial Services, Division of Treasury, Bureau of Collateral Management on behalf of the FDOT upon receipt of this Memorandum of Agreement. Such account will be an asset of FDOT.
2. All deposits shall be made payable to the Department of Financial Services, Revenue Processing and mailed to the FDOT Office of Comptroller for appropriate processing at the following address:

Florida Department of Transportation
Office of Comptroller
3717 Apalachee Parkway, Mail Station 42
Tallahassee, Florida 32311
ATTN: LFA Section

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Other deposits will be made only by the Participant as necessary to cover the cost of additional work prior to the execution of any Supplemental Agreements or Amendments.

A copy of this Agreement should accompany any deposits. When the check is mailed to Tallahassee, the District Office should instruct the Participant to mail the District Office a copy of the check.

4. The FDOT's Comptroller or designee shall be the sole signatories on the escrow account with the Department of Financial Services and shall have sole authority to authorize withdrawals from said account.
5. Unless instructed otherwise by the parties hereto, all interest accumulated in the escrow account shall remain in the account for the purposes of the project as defined in the LFA.
6. The Department of Financial Services agrees to provide written confirmation of receipt of funds to the FDOT.
7. The Department of Financial Services further agrees to provide periodic reports to the FDOT.

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
COMPTROLLER

STATE OF FLORIDA
DEPARTMENT OF FINANCIAL
SERVICES, DIVISION OF TREASURY

SIGNATURE

Aristides Rivera, P.E., P.L.S
Director
Public Works Department
Miami Dade County
111 NW First Street
Miami, Florida 33128-1970